

EXHIBIT A

COPY

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OF ORIGINAL FILED
Los Angeles Superior Court

JUL 28 2005

John A. Clarke, Executive Officer/Clerk
By J. SUNGA, Deputy

5 Attorneys for Plaintiff
6 GARY WHITNEY

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 GARY WHITNEY,

11 Plaintiff,

12 v.

13 DELPHI CORPORATION, a corporation,
14 DELPHI PRODUCT AND SERVICE
15 SOLUTIONS, INC. a corporation, and
DOES 1 through 50, inclusive,

16 Defendants.

Case No. BC337315

COMPLAINT FOR DAMAGES:

- (1) AGE DISCRIMINATION
[Cal. Gov't Code § 12940];
- (2) WRONGFUL TERMINATION
AND OTHER ADVERSE
EMPLOYMENT ACTIONS IN
VIOLATION OF PUBLIC
POLICY;
- (3) INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS; AND
- (4) NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS

DEMAND FOR TRIAL BY JURY

26 Plaintiff GARY WHITNEY (hereinafter referred to as "MR. WHITNEY" or
27 "PLAINTIFF"), as an individual, complains and alleges as follows:
28

I.

INTRODUCTION

1. In this case, PLAINTIFF, a highly-regarded Regional Sales Manager for defendants Delphi Corporation and Delphi Product and Service Solutions, Inc. (hereinafter "DELPHI" and/or the "COMPANY"), alleges, inter alia, that his employment was terminated due to his age and as part of a pattern and practice to systematically reduce the average age of its workforce by terminating the employment of and/or otherwise pressuring older workers to cease working for it and by hiring younger workers. MR. WHITNEY is alleging both disparate treatment and disparate impact age discrimination. As a result of Defendants' conduct, MR. WHITNEY has sustained substantial economic and severe emotional distress damages.

JURISDICTION AND VENUE

2. The Court has personal jurisdiction over the defendants because they are residents of and/or doing business in the State of California.

3. Venue is proper in this county in accordance with Section 395(a) of the California Code of Civil Procedure because the defendants, or some of them, reside in this county, and the injuries alleged herein, or some of them, occurred in this county. Venue is further appropriate in this county in accordance with Section 395(a) and Section 395.5 of the California Code of Civil Procedure because defendants and PLAINTIFF contracted to perform some of their obligations in this county, the contract was entered into in this county, because the liability, obligation and breach occurred, at least in part, within this county, and because the principal place of business of defendants, or some of them, are situated in this county. Venue is further appropriate in this county in accordance with Section 12965(b) of the California Government Code because some of the unlawful practices alleged by PLAINTIFF in violation of the California Fair Employment and Housing Act [Cal. Gov't Code §§ 12940, et seq.] were committed in this county.

PARTIES

4. GARY WHITNEY is an individual who was subjected to an unlawful termination of his employment in Los Angeles County.

5. MR. WHITNEY is informed and believes, and thereon alleges, that defendant DELPHI, and DOES 1 through 50, and each of them, are, and at all times herein mentioned were, corporations, unincorporated associations, partnerships or other business entities qualified to do business and/or doing business in the State of California. MR. WHITNEY is further informed and believes, and thereon alleges, that said defendants are and were, at all relevant times mentioned herein, "employer[s]" within the meaning of Sections 12926(d) and 12940(j)(4)(A) of the California Government Code.

6. The true names and capacities, whether corporate, associate, individual or otherwise of defendants DOES 1 through 50, inclusive, are unknown to MR. WHITNEY, who therefore sues said defendants by such fictitious names. Each of the defendants designated herein as a DOE is negligently or otherwise legally responsible in some manner for the events and happenings herein referred to and caused injuries and damages proximately thereby to MR. WHITNEY, as herein alleged. MR. WHITNEY will seek leave of Court to amend this Complaint to show their names and capacities when the same have been ascertained.

7. At all times herein mentioned, defendants, and each of them, were the agents, representatives, employees, successors and/or assigns, each of the other, and at all times pertinent hereto were acting within the course and scope of their authority as such agents, representatives, employees, successors and/or assigns and acting on behalf of, under the authority of, and subject to the control of each other.

FACTS COMMON TO ALL CAUSES OF ACTION

8. Defendant DELPHI manufactures and sells automotive electronics and replacement parts.

9. On January 6, 2002, defendant DELPHI hired MR. WHITNEY as its Western Regional Sales Manager. As the Western Regional Sales Manager, MR. WHITNEY was responsible for serving all states West of the Mississippi.

10. At the time that he was hired, MR. WHITNEY'S immediate supervisor was an individual named Bob Kustasz. MR. WHITNEY is informed and believes, and thereon alleges, that Mr. Kustasz was in his mid-fifties.

11. MR. WHITNEY is informed and believes, and thereon alleges, that in or about the spring of 2003, defendant DELPHI embarked on a pattern and practice to systematically reduce the average age of its workforce by terminating the employment of and/or otherwise pressuring older workers to cease working for it and by hiring younger workers.

13. MR. WHITNEY is informed and believes, and thereon alleges, that in or about the spring of 2003, Mr. Kustasz was terminated and that he was subsequently replaced by an individual named Mike Roberts. MR. WHITNEY is informed and believes, and thereon alleges, that Mr. Roberts was an individual in his mid-thirties. As a consequence of Mr. Kustasz being replaced by Mr. Roberts, Mr. Roberts became MR. WHITNEY's immediate supervisor.

14. MR. WHITNEY is informed and believes, and thereon alleges, that in or about November 2003, Mr. LaDieu was replaced by an individual named Joe Damato. MR.

1 WHITNEY is informed and believes, and thereon alleges, that Mr. Damato was an individual
2 in his mid-thirties.
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4 15. Since joining DELPHI, MR. WHITNEY's supervisor, Mr. Roberts, who
5 does not feel comfortable supervising older workers, has hired two new Sales Managers who
6 are in their mid-thirties.
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8 16. On or about June 23, Mr. Roberts summoned MR. WHITNEY to a
9 meeting at the Century Crown Plaza Hotel in Los Angeles, California. Mr. Roberts
10 explained that the purpose of the meeting was to go over planning for meetings that they
11 would be having with defendant DELPHI's customers later in the day. At the meeting, Mr.
12 Roberts told MR. WHITNEY that he had some "bad news" – he was firing MR. WHITNEY.
13 When MR. WHITNEY asked why he was being fired, Mr. Roberts asked: "Do we have to go
14 there?" MR. WHITNEY then responded in the affirmative and Mr. Roberts asked whether
15 MR. WHITNEY had ever met Burt Valanty (defendant DELPHI's Director of Human
16 Resources). When MR. WHITNEY said that he had heard of Mr. Valanty but never met him,
17 an individual walked over and introduced himself to MR. WHITNEY as "Burt Valanty."
18

19 17. With Mr. Valanty at their table, MR. WHITNEY again asked Mr.
20 Roberts why he was being fired and what he had done wrong. Mr. Roberts replied: "Gary,
21 you haven't done anything wrong. In fact, you have done everything I have asked of you.
22 You haven't done anything wrong, Gary. And I know that all of your dealers really like
23 you." Incredulous, MR. WHITNEY said: "Is this because I don't fit in with the new team? I
24 know that I am a lot older than all of the new team members. This about my age, isn't it?"
25 Neither Mr. Roberts nor Mr. Valanty denied MR. WHITNEY's statement. Instead, Mr.
26 Roberts looked at Mr. Valanty and Mr. Valanty said: "Let's just say that you do not have the
27 fit and finish for the new team (e.g., MR. WHITNEY didn't "fit" in a 30-something group
28 and he didn't have the same "finish" as the younger team members because his appearance

1 was old).”

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18. Although MR. WHITNEY had never asserted any type of claim against defendant DELPHI, Mr. Valanty handed MR. WHITNEY a Separation Agreement and Release which contained a release of, among other things, his rights under various statutes prohibiting age discrimination including “the Age Discrimination and Employment Act” (sic).

19. MR. WHITNEY is informed and believes, and thereon alleges, that statistical evidence will demonstrate that defendant DELPHI singled him and other workers (age 40 and over) out for termination for an impermissible reason – their age.

20. Prior to the filing of this actions, MR. WHITNEY filed a complaint with the Department of Fair Employment and Housing (“DFEH”) alleging that the acts of defendants, and each of them, established a violation of the Fair Employment and Housing Act, Government Code Section 12900 et. seq., received the requisite right to sue letters, and served those letters on Defendants.

21. MR. WHITNEY has been generally damaged in an amount within the jurisdictional limits of this Court.

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FIRST CAUSE OF ACTION

AGE DISCRIMINATION

(Cal. Gov't Code § 12940)

(Against All Defendants)

22. MR. WHITNEY realleges and incorporates by reference paragraphs 4 through 36, as though set forth in full.

23. In perpetrating the above-described actions, the defendants, and each of them, including DOES 1 through 50 and/or their agents and employees, subjected MR. WHITNEY to unlawful age discrimination in violation of California Government Code Section 12940 et seq.

24. By the aforesaid acts and omissions of defendants, and each of them, MR. WHITNEY has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and other pecuniary loss not presently ascertained.

25. As a further direct and legal result of the acts and conduct of defendants, and each of them, as aforesaid, MR. WHITNEY has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort, anxiety, physical pain and suffering. The exact nature and extent of said injuries is presently unknown to MR. WHITNEY. MR. WHITNEY does not know at this time the exact duration or permanence of said injuries, but is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

26. MR. WHITNEY is informed and believes, and thereon alleges, that the

1 defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing
2 and/or ratifying such acts, engaged in wilful, malicious, intentional, oppressive and
3 despicable conduct, and acted with wilful and conscious disregard of the rights, welfare and
4 safety of MR. WHITNEY, thereby justifying the award of punitive and exemplary damages
5 in an amount to be determined at trial.

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7 27. As a result of defendants' acts and conduct, as alleged herein, MR.
8 WHITNEY is entitled to reasonable attorneys' fees and costs of suit as provided in Section
9 12965(b) of the California Government Code.

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11 **SECOND CAUSE OF ACTION**
12 **WRONGFUL TERMINATION AND OTHER ADVERSE EMPLOYMENT ACTIONS**
13 **IN VIOLATION OF PUBLIC POLICY**
14 (Against all Defendants)

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16 28. MR. WHITNEY realleges and incorporates by reference paragraphs 4
17 through 36, 38 and 44 as though set forth in full.

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19 29. As alleged herein, and in violation of public policy, defendant DELPHI
20 discharged MR. WHITNEY from his employment because of his age. By terminating MR.
21 WHITNEY's employment, Defendants violated the fundamental public policies of the State
22 of California, as embodied in Sections 12940 et seq. of the California Government Code, and
23 other California statutes. Such fundamental public policies prohibit employers from
24 terminating employees because they are over the age of 40..

25
26 30. By the aforesaid acts and omissions of defendants, and each of them,
27 MR. WHITNEY has been directly and legally caused to suffer actual damages including, but
28 not limited to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and

1 other pecuniary loss not presently ascertained.

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3 31. As a further direct and legal result of the acts and conduct of defendants,
4 and each of them, as aforesaid, MR. WHITNEY has been caused to and did suffer and
5 continues to suffer severe emotional and mental distress, anguish, humiliation,
6 embarrassment, fright, shock, pain, discomfort, anxiety, physical pain and suffering. The
7 exact nature and extent of said injuries is presently unknown to MR. WHITNEY. MR.
8 WHITNEY does not know at this time the exact duration or permanence of said injuries, but
9 is informed and believes and thereon alleges that some if not all of the injuries are reasonably
10 certain to be permanent in character.

11
12 32. MR. WHITNEY is informed and believes, and thereon alleges, that the
13 defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing
14 and/or ratifying such acts, engaged in wilful, malicious, intentional, oppressive and
15 despicable conduct, and acted with wilful and conscious disregard of the rights, welfare and
16 safety of MR. WHITNEY thereby justifying the award of punitive and exemplary damages in
17 an amount to be determined at trial.

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19 33. As a result of defendants' conduct as alleged herein, MR. WHITNEY is
20 entitled to reasonable attorneys' fees and costs of suit as provided in Section 1021.5 of the
21 California Civil Procedure Code.

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24 **FOURTH CAUSE OF ACTION**
25 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
26 **(Against all Defendants)**

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28 34. MR. WHITNEY realleges and incorporates by reference paragraphs 4

1 through 36, 38, 44 and 50 as though set forth in full.
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3 34. Defendants' conduct as described above was extreme and outrageous
4 and was done with the intent of causing MR. WHITNEY to suffer emotional distress or with
5 reckless disregard as to whether their conduct would cause her to suffer such distress.
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7 35. By the aforesaid acts and omissions of defendants, as aforesaid, MR.
8 WHITNEY has been caused to and did suffer and continues to suffer severe emotional and
9 mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort, anxiety,
10 physical pain and suffering. MR. WHITNEY does not know at this time the exact duration
11 or permanence of said injuries, but is informed and believes and thereon alleges that some if
12 not all of the injuries are reasonably certain to be permanent in character.
13

14 36. MR. WHITNEY is informed and believes, and thereon alleges, that the
15 defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing
16 and/or ratifying such acts, engaged in wilful, malicious, intentional, oppressive and
17 despicable conduct, and acted with wilful and conscious disregard of the rights, welfare and
18 safety of MR. WHITNEY, thereby justifying the award of punitive and exemplary damages
19 in an amount to be determined at trial.
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21 **FIFTH CAUSE OF ACTION**
22 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
23 **(Against All Defendants)**
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25 37. MR. WHITNEY realleges and incorporates by reference paragraphs 4
26 through 36, 38, 44, 50 and 56 as though set forth in full.
27

28 38. In the alternative, defendants' conduct, as alleged above, was done in a

1 careless or negligent manner, without consideration for the effect of such conduct upon MR.
2 WHITNEY's emotional well-being.

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4 39. By the aforesaid acts and omissions of defendants, and each of them,
5 MR. WHITNEY has been caused to and did suffer and continues to suffer severe emotional
6 and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort,
7 anxiety, physical pain and suffering. MR. WHITNEY does not know at this time the exact
8 duration or permanence of said injuries, but is informed and believes and thereon alleges that
9 some if not all of the injuries are reasonably certain to be permanent in character.

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12 **PRAYER FOR RELIEF**

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14 WHEREFORE, PLAINTIFF prays for judgment against defendants, and each
15 of them, as follows:

- 16 1. General damages in an amount to be proved at trial;
17 2. Special damages in an amount to be proved at trial;
18 3. Punitive damages in an amount appropriate to punish defendants and to
19 make an example of Defendant to the community;
20 4. Reasonable attorneys' fees;
21 5. Costs of suit;
22 6. Interest;
23 7. For such other relief as the Court deems proper.

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1 DATED: July 27, 2005

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Gregory D. Helmer
Andrew H. Friedman, P.C.

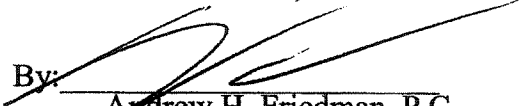
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4 By: 
5 Andrew H. Friedman, P.C.
6 Attorneys for Plaintiff
7 GARY WHITNEY
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PLAINTIFF'S DEMAND FOR JURY TRIAL

Plaintiff GARY WHITNEY hereby demands a trial by jury.

DATED: July 27, 2005

HELMER • FRIEDMAN, LLP
Gregory D. Helmer
Andrew H. Friedman, P.C.

By: 
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Attorneys for Plaintiff
GARY WHITNEY